

PROGRESS WITHOUT FEDERAL COMPULSION

Arguing the Case for Compromise Methods

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THE result of the fight over civil rights at both conventions was a platform which seems to half-satisfy most of the proponents as well as most of the opponents of a strong FEPC. In effect, both parties agreed to defer the working out of their internal cleavages on this difficult subject until after the election. But we can already see what the effect of the renewed combat will be.

On the Democratic side, Senators Humphrey and Lehman have made clear their intention to fight on for a compulsory FEPC; and there is no question of the determination of the Southern bloc to fight against it furiously and, with their Republican allies, successfully. It was the late Senator Wherry, Republican of Nebraska, backed by his prairie and Rocky Mountain colleagues, who devised the Senate rule which requires sixty-four Senators to break a filibuster, and which insures the South's success. If and when FEPC again comes to the Senate floor, it seems a safe bet that the Republicans from the wide open spaces will again provide the Southern Democrats with the votes they need to beat cloture. On the other side will stand, ranged alongside the Northern and Pacific Coast Democrats, their Republican colleagues from the same regions.

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Why, however, have our politicians, ordinarily so well schooled in the art of compromise, been unable to come up with any legislative solution to the civil rights question? We have seen an open compromise on this question placed outside the pale of polite discussion. Political leaders on both sides seem to have taken up the belief that the search for and support of measures less than the maximum would be more fatal than vague platform abstractions that can only insure the continuance of an ever more bitter deadlock. But is this really true?

Thanks to the zeal of both proponents and opponents of FEPC, the purpose of fair employment practices legislation has been in good measure forgotten and the fight is over a method. Compromises which might bring the purpose nearer by some different method are summarily rejected by advocates of FEPC even before opponents have a chance to declare themselves. And to cap the unhappy situation, the experience of the states having compulsory fair employment practices legislation indicates that we must learn a great deal more about the favored method before we can say that this is the only way to realize the purpose of fair employment legislation.

FLUSHED by the victory of President Truman in the 1948 elections, minority and labor groups descended on Washington in January 1949 demanding a compulsory FEPC and repeal of the Taft-Hartley Act. The atmosphere was excellent for achieving a good portion of both objectives. What seems in retrospect to have been needed was a willingness to compromise on methods. But neither the leaders of labor nor those of the minority groups were in a mood to consider any compromise—until it was too late.

Thanks to labor's intransigent stand, Taft-Hartley appears here to stay in a virtually unaltered form. And thanks to the equally intransigent stand of the proponents of civil rights legislation, that issue was also shoved up a blind alley.

Moderates in the cause of civil rights wanted to push action on federal anti-poll tax and anti-lynching legislation, both of which had an excellent chance of passage. In the course of this fight, it was hoped that a coalition could be formed among liberal members of the Senate to insure at least some steps toward the adoption of an FEPC program—perhaps an educational or voluntary program at first, in order to allay Southern opposition and suspicion, and to pave the way for a program with teeth.

To this program, some groups took strong exception, and under their leadership the proponents of a compulsory FEPC took an all or nothing attitude. Meanwhile, however, the conservatives in both parties were recovering from the sting of the previous November's defeat. Under the slogan "the people did not vote for socialism," the late Senator Wherry, Republican whip in the Senate, used the Southern filibuster against FEPC to forge and cement the Southern Democrat-Republican coalition. This killed all chances for a civil rights or any other liberal program in the remainder of President Truman's administration. It may well have extended the conservative veto into the future. For it resulted in the adoption of a cloture rule whereby, as Senator Paul Douglas pointed out, the Senators representing "a combination of the seventeen smaller states, with less than 8 per cent . . . of the population . . . can tie up the Senate and the country and defeat the will of over 90 per cent of the people."

"**W**HAT do you mean, compromise?" FEPC's backers might well ask. "Would not compromise mean elimination of compulsion, and would that not make FEPC worthless?" These questions go to the heart of the matter.

The compromise most frequently ad-

vanced stems from a proposal by Representative Brooks Hays, Democrat of Arkansas. Early in 1948, Hays proposed an advisory civil rights agency in the Department of Labor which would take the lead in assisting state officials to eliminate all discrimination based on race, religion, or national origin. The Hays measure would enunciate a strong pro-civil rights policy. It would, however, be without any enforcement provisions.

The leader of the Southern bloc, Senator Richard Russell, has stated that he would be willing to accept something along the lines of the Hays proposal, provided it included provisions for voluntary action on discrimination against the aged and against women. This chivalrous proposal should certainly be accepted at face value. No harm can come from assisting these populous groups. Massachusetts has already amended its compulsory FEPC law to forbid employment discrimination against older workers, and Connecticut, Massachusetts, New York, Rhode Island, and Washington all have both compulsory FEPC legislation and laws which prohibit discrimination in rate of pay because of sex. And in any case, the way the agency was conducted—regardless of its powers—would depend on who was appointed to it, and with an administration committed to action in civil rights, we might expect appointments that would not subordinate discrimination on account of race and national origin to other types of discrimination.

For a voluntary program to do a real job in furthering fair employment practice, however, it must provide for three basic functions: (1) public hearings with the right to subpoena witnesses and to publish findings and recommendations; (2) public information and education aimed at informing citizens of the concept and meaning of fair employment practice; and (3) basic studies of racial, religious, and national origin employment patterns and trends, and of the methods of improving job opportunities for minority group workers.

Each of these powers rivals compulsion in importance. The first would, in effect, give a voluntary program all powers but the right

to go to a court and ask for an order enforcing its recommendations. In many areas, including the most important ones outside of the South, most businesses could ill afford the unfavorable publicity which would result from a public hearing and finding of discrimination. The fear of formal or informal boycotts by members of the affected groups often makes publicity equal in effect to court orders. Even in many parts of the South, publicity would be at least no asset.

We have seen the effects of public hearings in those states having FEPC laws. Invariably the employer will deny guilt and proclaim his company completely innocent of discrimination. Frequently, these denials are made in the honest belief that no discrimination has taken place. Yet the mere mention of a public hearing almost invariably is sufficient to bring redress to the individual complainant and promises from the company to comply with the law strictly in the future.

Let it be emphasized that this submission does not come about because the employer is fearful of being found guilty of discrimination *but primarily because the employer knows that win, lose, or draw, he is likely to get a black eye in the public mind which can do his business no good.* To draw an apt, if unhappy comparison, the employer publicly accused of discrimination has as hard a time proving his innocence in the court of public opinion as has the individual who is publicly charged with Communist sympathies by a Congressional committee.

THE second function—information and publicity—is also important. Hodding Carter, the distinguished liberal publisher of Greenville, Mississippi, has declared that 999 of every 1,000 Mississippians are so strongly against FEPC that the threat of such legislation always insures the election of a Bilbo, an Eastland, or a Rankin. But do Mississippians, or any Southerners, really know what FEPC is all about? As Malcolm Ross, chairman of the wartime agency pointed out, there never has been a dispassionate pro-and-con debate on FEPC in Mississippi, or for that matter, probably in any Southern

community. A Rankin, or even a Byrnes, does not have to give a rational basis for opposing FEPC, and can make the most outrageous misstatements against it—adding to the vehemence with which it is opposed.

Here is where the public information and education arm of a non-compulsory fair employment agency could really serve a magnificent purpose. For the first time, a serious effort could be made to give the facts about FEPC—including the simple truths that the only purpose of FEPC is to promote employment on the basis of merit only and that FEPC is most emphatically not aimed at taking away anybody's job or seniority.

The information job would of course be most difficult in the South, but even where the initial resistance is lower, information would still have an important function. A direct test of FEPC's appeal to the voters came in 1946 in California, and the proposal for a compulsory state law won the support of only 30 per cent of the voters. Although some of the opposition votes were blamed on the "kiss of death" support of Harry Bridges and other pro-Communist elements, Samuel Lubell has demonstrated that the California proposal was defeated by a combination of upper- and middle-income Republicans and Democrats of "old American" and Irish background. Significantly, an examination of the campaign literature reveals much heat and emotion (from both sides), but little enlightenment about what FEPC really means. Certainly there is a good deal of work to be done with the 70 per cent who voted against FEPC.

Part of this educational job would be to explain to the business community—which tends to oppose civil rights legislation affecting business—that there is no real threat to it in this kind of legislation. It was this kind of opposition that led the voters of Portland, Oregon, a liberal community, to defeat in 1950 by a vote of 74,444 to 61,058 an ordinance which would have outlawed discrimination in places of public accommodation. Similar measures passed by state legislatures would have had equally tough sledding in a referendum. In short, educational informa-

tion about civil rights legislation is needed all over the country. To develop that information through a voluntary FEPC agency could assist materially in smoothing the path of any compulsory program which might be adopted at a later date.

A special but no less important educational function which can be performed under a voluntary program is to reeducate employment managers, personnel recruiters, and vocational-guidance directors. The aim would be to eliminate stereotyped employment and job preparation. People still hire by racial type; guidance directors still advise minorities not to train for jobs where there is discrimination; and in this way the vicious circle of no training because no jobs, and no jobs because no training, is perpetuated. And unless the potential skills are available, FEPC cannot open up jobs.

THE third basic function for a workable voluntary program has an importance beyond the mere acquisition of knowledge as to patterns of employment. Besides actually needing much more information on basic employment trends, we also need to know how to make FEPC work. This statement may be sheer heresy to those who believe either that existing state laws are well-oiled functioning mechanisms, or that a compulsory federal FEPC would have no problems except those caused by recalcitrant employers or unions. Nevertheless, the existing state laws have not accomplished quite the revolution in employment patterns that their sponsors hoped for in New York, New Jersey, Connecticut, and Massachusetts. Let us consider the situation in New York, where the political, social, ethnic, and religious climate is most favorable and where a fair employment practice law has been in force longest.

In 1949, the New York State Commission Against Discrimination received 315 "verified complaints." This is the largest number which SCAD has ever received in a single year; the average number of verified complaints for the previous three and one-half years of SCAD's existence was approximately 275. In 1950, verified complaints dropped

to 257; in 1951, their total number was 243.

These statistics do not by any means tell the whole story of SCAD's operations. One case may, for example, involve the employment patterns of an entire industry; another case may represent the grievance of only one individual. Nevertheless, these figures do raise two fundamental and related questions: Why are the number of complaints so small? Why are they declining? SCAD's answer to at least the second question, as suggested in its 1951 annual report:

"Discrimination still exists. Deeply embedded practices of job discrimination are not readily and permanently changed. . . . However, the record of New York State . . . indicates that second-class job status for individuals because of their race, creed, color, or national origin has been considerably reduced."

What has happened, in effect, is that SCAD is now down to the hard core of discriminatory employment patterns. For example, SCAD can take credit for a good job of improving minority group employment in many New York shops and department stores. But the fancy Fifth Avenue shops and stores have not noticeably changed their employment patterns. In fact, it is generally where one expects to find the "deeply embedded practices of job discrimination" that the SCAD report speaks of that it has been least effective; the railroads, the airlines, the financial district and financial institutions are a few examples.

With discrimination declining in areas more flexible and open to change, workers in minority groups tend to aim at such places to find employment. Like all workers, they prefer jobs to insults, or a runaround, or legal action. So that after a first flush of success in areas relatively easy to crack, SCAD is now left with the job of taking over the tougher areas; and here, because of insufficient complaints or greater ability of these employers to resist public pressure, it also has the job of devising new techniques.

THIS explains why the number of complaints to SCAD have been declining.

It does not explain why the number is so low in the first place, and why no—or few—complaints come from areas where we know a discriminatory pattern of employment is entrenched. To overcome this difficulty, two kinds of measures are necessary (as I pointed out in an article in COMMENTARY in December 1947): (1) a broad public information program, and (2) the integration of vocational guidance with fair employment.

SCAD itself has repeatedly stressed these objectives. For example, part of its educational program is to encourage young people to train for jobs in accordance with their aptitudes and without considering past discrimination. The commission's educational services, films, radio programs, speakers, etc., give practical aid to vocational-guidance counselors along the same lines. In addition to the work with counselors, these projects reach school administrators, teachers, employer groups, and community agencies—in other words, the various forces which influence young people in their career selection, to the end that fear of discrimination will be eliminated as a factor in that section.

Nor has SCAD limited its educational work to prospective employees. It has established contacts with foremen, and set up shop-steward training programs. At the Republic Aviation Corporation in Farmingdale, Long Island, SCAD conducted a week-long intensive training session. On another occasion SCAD's educational program was featured at a dinner meeting of shop stewards of all unions affiliated with the American Federation of Labor in Manhattan and Brooklyn.

Despite SCAD's progress in getting at the grass roots, the hard core of discrimination remains largely unbroken in the employment field, partly because it takes years before these teachings can achieve their full impact in the labor market. New ideas, fairer ideas, take time to permeate through our economic system. But if this is so, an educational program is in a very organic sense a necessary forerunner to fair employment practices.

Perhaps even more important than the slowness of educational measures has been the failure of the proponents of compulsory

FEPC to develop a mechanism to get cases to the state commissions. What is needed is an organization to play a similar role to that played by labor unions in handling unfair labor practice cases. Although FEPC legislation has been modeled on labor relations legislation, the significant role of the union in the success of labor laws has been neglected. Nearly all unfair labor practices charges are taken up by unions for their members, but no similar organizations exists to handle racial or other discrimination cases in the province of fair employment laws. In my 1947 article I wrote:

"It may not be farfetched to declare that FEPC's proponents should give as much thought and energy to this proposal [for an organization especially designed to aid complainants in reaching the commission] as to the legislation itself. An FEPC program faces strangulation unless the gulf between its administrators and those discriminated against can be fully bridged."

"Strangulation," to be sure, has not set in. But until this organization is developed, FEPC legislation is not likely to achieve its full purpose.

IN THE first two years of its operations, SCAD made real and noticeable progress. Since 1948, its progress has been at a much slower pace. Instead of demanding FEPC at the cost of consigning the liberal coalition to becoming an ineffective minority, is it not intelligent to settle for something less and in the meantime add to our knowledge as to how we can most effectively use legal measures to eliminate discrimination in employment? All this is no argument to scuttle the state laws that we have. To crack "deeply embedded practices of job discrimination," we will probably need both "know-how" and compulsion. But it is highly likely that the more flexible employment patterns can be cracked without compulsion, and in the meantime, the educational process can do much to smooth the path for stronger legislation, which today, like the Volstead Act, might fail on a national scale because of widespread indifference and resentment.

The workability of any voluntary FEPC program is, of course, subject to question. Certainly, one's ability to settle cases of alleged discrimination by conciliation are stronger if enforcement power is in the background; hence it is no argument in favor of the possible effectiveness of a voluntary program to point to the fact that compulsion is very rarely resorted to, even when written into law. Public hearings and recommendations are, however, far from powerless as an incentive to a conciliation settlement.

Critics of experimenting with a voluntary approach argue that Wisconsin and Indiana have had voluntary programs which have not been conspicuously successful in either improving job opportunities or in educating the public to the needs of a compulsory program. Indeed, it has been charged that state laws like these are used to bury FEPC, not to promote it.

Now this, of course, could happen. A voluntary program might be a pious fraud instead of a genuine forward step. But certainly it need not—it would depend, as we said earlier, on the nature of the act and its administration. Connecticut tried a voluntary program first, then switched to compulsion, and the same thing occurred in Cleveland. Professor John Davis, of Lincoln University, writing in the July *Fortune*, cites Cleveland as the classic example of the failure of a voluntary program, but if so it was certainly a very qualified failure. For Professor Davis's article points out that Cleveland's voluntary approach did accomplish one important thing: it showed Cleveland industry that it had nothing to fear from fair employment practice, and as a result Cleveland industry was persuaded to cooperate with a stronger compulsory program. This "failure" thus resulted in achieving Professor Davis's objective of compulsion rather smoothly and without arousing bitterness and intransigence. And it should also be noted that a study of the "ineffective" voluntary Cleveland program in December 1949 by the National In-

dustrial Conference Board showed that as a result of its operations many people had secured jobs that would have been closed to them if this interim period had been spent in a battle over the pros and cons of voluntarism and compulsion.

Obviously, a voluntary federal program could be made to serve or to hinder the cause of fair employment. It would be up to those favoring the principle to see that the latter did not happen and the last-ditch opponents would, I think, need more votes than they now have to starve a voluntary program to death—unless the proponents of fair employment were too busy promoting compulsion to care about preventing that fate.

IN A real sense, however, the merits of voluntary vs. compulsory programs is not at stake on the federal scene. What is at stake is the maximum progress toward genuine fair employment. To all but the most unrealistic optimist, there is little chance of any immediate Congressional enactment of compulsory FEPC legislation. The real choice is whether to continue fighting against an opposition that solidifies with every blow, and thus get nowhere; or to accept a compromise on the way toward the basic goal.

If compromise is rejected, we may see this present era of full employment pass by without the setting up of any governmental machinery to protect minority-group job rights when lay-offs occur and job opportunities become scarce. If, on the other hand, compromise is accepted, a vehicle will be available that can at least carry the message of fair employment throughout the country, on a permanent, day-to-day basis; studies of racial- and national-origin employment trends can be made on a scale hitherto impossible; and the means of getting aggrieved persons to press cases may be learned. And if, as we believe, the great majority of Americans really are in favor of equality of job opportunity, our experience will lead us eventually to the adoption of the best method of insuring it.